

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FERNANDO MURILLO,

NO. C 02-3264 JW

Petitioner(s),

**ORDER DENYING CERTIFICATE OF  
APPEALABILITY**

v.

JOSEPH L. MCGRATH, Warden

Respondent(s).

Petitioner Fernando Murillo initiated this suit on July 9, 2002. On March 4, 2003, the Court denied Petitioner's motion for appointment of counsel as premature, and extended the time to file an application to proceed in forma pauperis. In April of 2003, Petitioner filed a motion for leave to proceed in forma pauperis together with a certificate of funds in his prisoner account. On May 7, 2003, the Court denied Petitioner's motion to proceed in forma pauperis and motion for appointment of counsel, and ordered Petitioner to pay the filing fee within thirty days.

On February 10, 2004, the Court dismissed the action based upon Petitioner's failure to pay the filing fee, and entered judgment. Over a year later, on August 24, 2005, Petitioner filed a notice of appeal.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability "only if

1 the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
2 2253(c)(2). The certificate must indicate which issues satisfy this standard. See id. § 2253(c)(3).

3 As stated above, the Court dismissed the instant petition for failure to file the filing fee.  
4 Accordingly, the Court DENIES the certificate of appealability.

5 The Clerk shall transmit the file, including a copy of this order, to the Court of Appeals. See  
6 Fed. R. App. P. 22(b).<sup>1</sup>

7 Dated: April \_\_, 2006

8 JAMES WARE  
United States District Judge

United States District Court  
For the Northern District of California

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26 <sup>1</sup> Petitioner may then ask the Court of Appeals to issue the certificate, see Fed. R. App. P.  
27 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see Fed. R. App.  
28 P. 22(b)(2).

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2  
3 Fernando Murillo  
P-33479  
4 High Desert State Prison  
P. O. Box 3030  
5 Susanville, Ca 96127-3030

6 Gregory A. Ott  
Seth K. Schalit  
7 Attorney General's Office  
455 Golden Gate Avenue  
8 Suite 11000  
San Francisco, CA 94102  
9

10 **Dated: April \_\_, 2006**

**Richard W. Wieking, Clerk**

11  
12 **By: /s/JW Chambers**  
13 **Melissa Peralta**  
14 **Courtroom Deputy**  
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